

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MURs 6960 & 6991
5 SW Technologies, LLC)
6 d/b/a Advocacy Data)
7 Roger A. Stone)
8)
9

10 **SECOND GENERAL COUNSEL'S REPORT**

11 **I. ACTIONS RECOMMENDED**

12 Authorize the Office of General Counsel to enter into pre-probable cause conciliation
13 with SW Technologies, LLC d/b/a Advocacy Data ("SWT"); approve the attached proposed
14 conciliation agreement with a civil penalty; and dismiss the allegations that Roger A.
15 Stone violated 52 U.S.C. § 30111(a)(4) pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

16 **II. BACKGROUND**

17 The Commission previously found reason to believe that SWT violated 52 U.S.C.
18 § 30111(a)(4), the "sale and use" provision of the Federal Election Campaign Act of 1971, as
19 amended (the "Act"), in connection with its commercial use of "salted names" derived from
20 disclosure reports filed by the Republican National Committee ("RNC") and the National
21 Republican Congressional Committee ("NRCC").¹ In addition, the Commission voted to take no
22 action with regard to allegations that Stone, SWT's founder, president, and CEO, personally
23 violated the sale and use provision.²

24 Pursuant to the Commission's findings, the Office of General Counsel commenced an
25 investigation to ascertain information regarding the scope of SWT's use of FEC data, how it

¹ Cert. ¶ 2(a), MURs 6960 & 6991 (SW Technologies, LLC, *et al.*) (July 12, 2017). Political committees may submit 10 pseudonyms or "salted" names on each report "in order to protect against the illegal use of names and addresses of contributors." 52 U.S.C. § 30111(a)(4).

² Cert. ¶ 2(b), MURs 6960 & 6991 (SW Technologies, LLC, *et al.*) (July 12, 2017).

1 acquired the data, and the efficacy of SWT's remedial measures.³ Having obtained the
2 necessary information from the investigation, this Office is prepared to recommend that the
3 Commission enter into pre-probable cause conciliation with SWT and that the Commission
4 dismiss the allegations against Stone in his personal capacity.

5 III. RESULTS OF THE INVESTIGATION

6 SWT rents email lists and provides voter, demographic, and other information for
7 political advocacy and constituent communications.⁴ SWT owns a database known as the "voter
8 file" that is the centerpiece of its business operations.⁵ SWT has "enhanced" the names in the
9 voter file by appending approximately 200 pieces of personal information, such as ethnicity and
10 education.⁶ Beginning in 2013, SWT began matching the voter file to disclosure reports copied
11 from the Commission's website filed by the RNC and NRCC, appending a notation or data field
12 to anyone with a contribution history.⁷ One of the resulting products from this matching process

³ *Id.* ¶ 2(d); *see* First Gen. Counsel's Rpt. at 9-10, MURs 6960 & 6991 (SW Technologies, LLC, *et al.*).

⁴ Stone Dep. Tr. at 27:3-31:19 (Oct. 25, 2018). SWT was formed in 2010 as the successor company to Advocacy Inc. — Stone has since created a successor company to SWT called Advocacy Data, Inc. but SWT still exists and has represented that it is willing to enter into pre-probable cause conciliation to resolve this matter. *See* Letter from Brian Svoboda and Karl Sandstrom, Perkins Coie LLP, to CJ Pavia, Attorney, FEC (Oct. 10, 2018) ("Oct. 2018 Subpoena Resp."); Stone Dep. Tr. at 15:9-23, 19:20-21, 21:9-22:13.

⁵ Stone Dep. Tr. at 27:15-19 ("The heart of what we do all comes out of the database we maintain. It's 190 million politically active individuals and by politically active I mean they're all registered voters.").

⁶ *Id.* at 27:15-21, 28:3-5.

⁷ *Id.* at 48:2-13; 63:24-64:4, 89:3-7. At first, SWT represented that it "did not create any products or use [FEC data] . . . in any commercial manner." Letter from Mike Wittenwyler and Nate Zolik, Godfrey & Kahn S.C., to CJ Pavia, Attorney, FEC ¶ (D)(2) (Sept. 6, 2017) ("Sept. 2017 Post-RTB Resp."). Following subpoenas, SWT acknowledged that "FEC data was used . . . to create the [RED List]." Oct. 2018 Subpoena Resp. ¶ (1)(c). Stone Dep. Tr. at 45:12-21, 48:23-49:8; SWT000002 (email from Stone to Gopi Yadav, contract employee responsible for certain data requests, on Feb. 2, 2015, at 11:15am, inquiring about "pulling new FEC data" that will be sent "out for appending"); SWT000003 (email from Stone to Yadav on Jan. 22, 2015, at 9:55am, with directions to perform a "new round of pulling down FEC data" to prepare "a file ready to send out for appending").

1 was a mailing list called the Republican Elite Donors ("RED") List, which was initially
2 developed in November 2014 and first sold on December 16, 2014.⁸

3 The RNC and the NRCC engage in the sanctioned practice of including "salted" or
4 fictitious names on their FEC disclosure reports to deter illegal use of their contributor
5 information.⁹ In June 2015, the RNC received solicitation packages that were addressed to
6 salted names from the National Rifle Association and Jeb 2016.¹⁰ The RNC contacted the
7 mailing vendor and discovered that it had used SWT's "Republican Elite Donors" mailing list for
8 the fundraiser. Several weeks later, in late June, July, and August of 2015, the RNC received
9 additional solicitation packages addressed to salted names from Jeb 2016 and Carson America
10 that were also traced back to the RED List.¹¹ Meanwhile, in August 2015, the NRCC received a
11 solicitation package addressed to a salted name from Cruz for President.¹² The NRCC contacted
12 Cruz for President and discovered that it had also used SWT's Republican Elite Donors list to
13 compile addresses for the solicitation.

14 During the investigation, this Office sought information on how the RNC and NRCC
15 fictitious donor names were placed into the RED List. Additionally, the investigation looked at
16 SWT's general practice of using FEC contributor data to enhance its existing lists to identify
17 known political contributors. SWT explained that its object in reviewing the RNC and NRCC

⁸ See Stone Dep. Tr. at 80:12-16, 81:5-9; Sept. 2017 Post-RTB Resp. ¶ (B)(2); *id.*, Ex. 1 (chart of RED List sales).

⁹ MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); 52 U.S.C. § 30111(a)(4); 11 C.F.R. § 104.3(e).

¹⁰ MUR 6991 Compl. at 2.

¹¹ *Id.*

¹² MUR 6960 Compl. at 1.

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1 data was to match the information with the pre-existing list of names in the SWT voter file, not
2 to copy new names or addresses.¹³ Stone, the executive officer responsible for managing the
3 RED List, had 30 years of experience in politics and with Commission regulations, and was
4 aware that simply copying and selling names from the FEC database would run the risk of
5 mailing a salted name which would result in detection.¹⁴ However, SWT would later conclude
6 that one or more of the raw FEC data files used for the matching process had been
7 “inadvertently” transmitted to the company handling rental sales of the RED List, resulting in
8 40,000 names being added to the list that had come from the FEC database.¹⁵

9 The investigation established that the RED List was created by “narrowing down” the
10 190 million names in the voter file to those deemed most likely to donate to Republican or
11 conservative organizations (the RED List contained approximately 200,000 names).¹⁶ One
12 “factor” that could “move someone onto the RED List” was if his or her name also appeared on
13 the FEC disclosure reports filed by the RNC or NRCC that SWT had downloaded.¹⁷ According
14 to SWT, one of the “largest indications” that a person has a “propensity to donate” “is if they
15 have donated in the past.”¹⁸ SWT developed the lists, but used a subcontractor, TMA Direct, to
16 market the RED List and handle individual client orders.¹⁹ After sending TMA Direct an initial

¹³ Stone Dep. Tr. at 74:23.

¹⁴ MUR 6960 Resp. at 1 (Oct. 20, 2015); Stone Dep. Tr. at 59:9-19 (“I’ve been working with lists since 1986.”). Stone said that he understood the provision to restrict the sale and use of names and addresses, and that it did not restrict the matching of contribution histories to pre-existing names to target solicitation prospects. *See id.* at 96:14-98:1.

¹⁵ MUR 6991 Resp. at 2 (Jan. 19, 2016); Sept. 2017 Post-RTB Resp. at 6.

¹⁶ Stone Dep. Tr. at 33:4-8, 99:16-17; MUR 6991 Compl., Ex. B at 2 (RED List data card). SWT attests that the RED List was the first and only product created by matching FEC contribution histories with the voter file. Stone Dep. Tr. at 53:15-21, 54:1-5, 80:17-81:-9.

¹⁷ Stone Dep. Tr. at 49:21-25; Oct. 2018 Subpoena Resp. ¶¶ 1(c)-(d), 3(a).

¹⁸ Stone Dep. Tr. at 33:13-21, 42:6-9; *see id.* at 50:8-51:2.

¹⁹ *Id.* at 55:16-25.

1 batch of names used to create the list, SWT also sent periodic updates.²⁰ SWT now believes that
2 it was during one of the update transmittals that it may have sent the 40,000 names to TMA
3 Direct who added the names to the RED List.²¹

4 In June 2015, SWT was alerted by the RNC through a cease and desist letter that the
5 RNC had received solicitation packages addressed to salted names on its disclosure reports,
6 indicating that the RED List contained names and addresses copied from the FEC database.²²
7 SWT conducted an internal investigation which sought to compare the names sent to TMA
8 Direct with the voter file.²³ If a name sent to TMA Direct was not found in the voter file, this
9 would mean that it had come from some other, unapproved source.²⁴ SWT believed that the
10 names in the voter file were not salted because they went through a "hygiene" process to verify
11 that the names are real and confirm their mailing address.²⁵ However, the investigation was
12 "inconclusive" and did not uncover any names or addresses apparently copied from the FEC

²⁰ *Id.* Though the term "list" is used for marketing purposes, the product is more akin to a database, whereby clients purchase or rent a subset of names and addresses that match a given set of criteria. See SWT000081 (detailed list of RED List individual orders); MUR 6991 Compl., Ex. B at 2 (RED List data card).

²¹ Stone's personal recollection is that he instructed the contract employee responsible for maintaining the RED List, Gopi Yadav, on the sale and use prohibition, *i.e.*, training him "never to export raw FEC data" onto commercial lists and that "FEC-derived data was for internal purposes only." Stone Dep. Tr. at 36:4-7, 38:3-14, 39:1-25, 40:1-10; Sept. 2017 Post-RTB Resp. ¶ (B)(2). The instructions, according to Stone, were likely provided both by email and by phone. Stone Dep. Tr. at 40:13-41:20. Yadav is situated in India and was contracted by V-Empower, an IT solutions company. Stone Dep. Tr. at 17:18-18:12, 34:8-12, 37:20-24; Sept. 2017 Post-RTB Resp. ¶ (B)(1). At first, SWT said it "terminated" its relationship with Yadav and "does not have a current address or telephone number for him." Sept. 2017 Post-RTB Resp. ¶ (B)(1). Following subpoenas, SWT clarified that Yadav still works in the same position for Stone at SWT's successor company, Advisory Data, Inc. Stone Dep. Tr. at 34:19-35:9.

²² MUR 6991 Resp. at 2; MUR 6991 Compl., Ex. D; see Stone Dep. Tr. at 58:16-60:12.

²³ Stone Dep. Tr. at 59:23-61:22; 67:10-17; see Sept. 2017 Post-RTB Resp. ¶ (C)(6); SWT000011 (email from Stone to Yadav, June 9, 2015 at 4:15pm, instructing Yadav to take "all the postal names you sent to TMA and match them against the voter files").

²⁴ Stone Dep. Tr. at 63:1-7.

²⁵ *Id.* at 56:15-57:7.

1 database.²⁶ SWT never considered asking the RNC for its salted names, which might have been
2 useful in conducting the investigation.²⁷

3 Without having identified the root source of the FEC data breach, SWT decided to
4 “reset” the RED List back to a moment in time when the company believed that it did not contain
5 any FEC data — the list had been rented since December 2014 without issue and SWT maintains
6 that June 2015 was the first time that it became aware of any such problem.²⁸ SWT thus deleted
7 the most recent update prior to when the issue regarding the RNC’s salted names arose, and then
8 continued selling the RED List, assuming the problem had been fixed.²⁹

9 In August 2015, SWT received a second cease and desist letter, this time from the NRCC,
10 alerting SWT that the NRCC had received solicitation packages addressed to salted names on its
11 disclosure reports, indicating that the RED List still contained names and addresses copied from
12 the FEC database.³⁰ SWT, in consultation with TMA Direct, immediately pulled the list from
13 the market — the final rental was on August 11, 2015, and the aggregate sales during the
14 relevant period, dating back to December 16, 2014, equaled \$33,611.40, according to records
15 provided by SWT.³¹ Apart from these cease and desist letters from the RNC and NRCC, SWT

²⁶ *Id.* at 67:24-68:1. SWT explained that a “possible explanation” for why the investigation was inconclusive is that it failed to review all files sent to TMA Direct, thus missing the FEC data. *Id.* at 67:8-17.

²⁷ *Id.* at 81:12-16.

²⁸ *Id.* at 58:11-15, 70:8-72:10; Sept. 2017 Post-RTB Resp. ¶ (C)(2).

²⁹ Stone Dep. Tr. at 71:3-72:11. SWT maintains that it “thought it had solved the problem” despite being unable to pinpoint the cause. *Id.* at 70:12; *see also id.* at 59:23-60:12 (explaining how SWT was also suspicious that some other entity, not SWT, was responsible for the inappropriate use of FEC data). The update deleted by SWT included data from another list broker as well as other sources. *Id.* at 70:6-71:7; *see also* MUR 6991 Resp. at 2 (explaining that SWT believed the FEC data may have originated from a batch of donor lists “obtained through another broker in April of 2015”).

³⁰ MUR 6960 Compl., Ex. D.

³¹ Sept. 2017 Post-RTB Resp., Ex. 1; Stone Dep. Tr. at 72:23-73:12.

1 maintains that it did not receive any other notifications about misuse of FEC data regarding the
2 RED List or any other product.³²

3 The MUR 6960 Complaint (August 2015) and the MUR 6991 Complaint (January 2016)
4 included the salted names at issue.³³ SWT used the salted names to perform a targeted search of
5 its system, which revealed that the raw FEC data files containing disclosure reports filed by the
6 RNC and NRCC — intended to be matched with the voter file, as described above — had been
7 transmitted to TMA Direct and added to the RED List.³⁴ SWT was unable to establish precisely
8 how or when this occurred.³⁵ However, this was the “only logical conclusion” because the salted
9 names appeared in the raw FEC data files but not in the voter file.³⁶ SWT deleted the raw FEC
10 data files from its system, removed the notations in the voter file showing contribution histories,
11 and also discontinued sales of the RED List.³⁷ SWT asserts that using FEC data is “no longer a
12 part of [its] business model.”³⁸

³² Stone Dep. Tr. at 79:9-12; MUR 6991 Resp. at 3.

³³ MUR 6960 Compl., Ex. A; MUR 6991 Compl., Exs. E, F.

³⁴ Stone Dep. Tr. at 73:17-74:4; 75:4-11; 76:24-77:16.

³⁵ *Id.* at 89:20-90:6; *see id.* at 57:9-58:1 (“[A]pparently somehow in either my communications with [Yadav] on what he should pull and send or [the Chief Operating Officer’s] verbal communications on one of these data dumps, the raw FEC data [that SWT intended to match with the voter file] was transmitted [to TMA Direct].”); *id.* at 78:8-16 (surmising that Yadav may have “misinterpreted” an instruction).

³⁶ *Id.* at 75:4-11; SWT000012-13 (email from Stone to Yadav on Jan. 13, 2016, at 4:12pm, providing salted names from MUR 6991 Complaint to compare with voter file); SWT000014-15 (email from Yadav to Stone on Jan. 14, 2016, at 6:52am, confirming that the names were not found in the voter file but appeared in the “FEC Donor file” for the RNC).

³⁷ Stone Dep. Tr. at 52:18-53:11, 81:25-82:16; Sept. 2017 Post-RTB Resp. at 6; SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data); *see* Stone Dep. Tr. at 53:12-14 (confirming that “the voter file is in a state right now as if the FEC database doesn’t exist”).

³⁸ Stone Dep. Tr. at 96:13.

IV. LEGAL ANALYSIS

A. SWT Violated the Sale and Use Provision

The Act requires political committees to report the name, mailing address, occupation, and employer of each person who makes an aggregate contribution in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee), together with the date and amount of any such contribution.³⁹ Further, the Act requires that the Commission make all such reports available for public inspection and copying, except that information copied from such reports “may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.”⁴⁰

The Commission found reason to believe that SWT violated the sale and use provision by inserting names and addresses copied from FEC disclosure reports onto the RED List. Our investigation revealed that SWT was in possession of raw FEC data files containing disclosure reports filed by the RNC and NRCC. SWT attests that its purpose for possessing the raw FEC data files was only to match the names appearing in those reports with the pre-existing names on SWT’s voter file to identify known contributors. SWT states that it did not intend to add any new names or addresses, understanding that it would be a violation of the sale and use provision and, moreover, that such misuse could be detected due to the possibility of mailing materials to a salted name. However, the raw FEC data files appear to have been transmitted to TMA Direct, the company that was responsible for marketing the RED List and handling individual client orders, and added to the RED List. Consequently, the RED List that was sold to customers

³⁹ 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A).

⁴⁰ *Id.* § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

1 included prohibited FEC data, including 40,000 names of RNC and NRCC donors, resulting in a
2 violation of the sale and use provision.

3 Though SWT's initial attempt to investigate and rectify the problem in June 2015 was not
4 successful, our investigation did not indicate that SWT sold the RED List knowing that it
5 contained FEC data, or that it had intentionally inserted the FEC data.⁴¹ Once SWT became
6 aware in August 2015 that it was unable to find the source of the FEC data impermissibly added
7 to the list, it voluntarily pulled the RED List from the market. SWT produced emails indicating
8 showing that it deleted all the FEC data from its system and, further, SWT maintains that it no
9 longer uses FEC data in any capacity.

10 In addition to impermissibly adding contributor names to its lists, SWT violated the sale
11 and use provision by misusing FEC data in developing the RED List or other commercial
12 products. As outlined in the First General Counsel's Report, it is impermissible to enhance the
13 value of a commercial mailing list by comparing its pre-existing names with the names of
14 contributors from disclosure reports filed with the Commission.⁴² Our investigation, in fact,
15 uncovered additional information establishing that SWT matched its voter file with RNC and
16 NRCC disclosure reports to identify known political contributors. SWT acknowledged that
17 whether a given person had a contribution history was an important factor in narrowing down the
18 voter file (190 million names) into the more concise RED List (200,000 names), which reflected

⁴¹ Although the error caused 40,000 names to supplement a 200,000 name list (*i.e.*, 20% of all names) which is a substantial amount, there are plausible explanations for why SWT would not have noticed the impermissible names being added to the name list: The RED List was not a tangible product, customers would rent portions of the list based on custom requests, and TMA Direct, not SWT, directly handled the client orders.

⁴² First Gen. Counsel's Rpt. at 8, MURs 6960 & 6991 (SW Technologies, LLC, *et al.*). The Report noted that Respondents vaguely acknowledged that SWT "added some FEC data to its proprietary model for use in identifying likely Republican contributors." *Id.* (quoting MUR 6991 Resp. at 2); *see* MUR 6960 Resp. at 2 (same).

1 the subset of names deemed most likely to make large donations to Republican or conservative
2 organizations. As SWT explained, "one of the . . . largest indications that somebody will donate
3 is if they have donated in the past."⁴³

4 The Commission has previously found this type of activity to constitute a violation of the
5 sale and use provision. For instance, in Advisory Opinion 1985-16 (Weiss), the requestor owned
6 a list of potential contributors and asked to search through disclosure reports "to compare the
7 names on [the] list with those individuals who have actually contributed to Federal election
8 campaigns."⁴⁴ The Commission concluded that this would be a violation because it would allow
9 the requestor to "purge the non-contributors" or "otherwise identify the contributors."⁴⁵ SWT's
10 process of matching its voter file with FEC disclosure reports to create the RED List is
11 functionally identical to the practices at issue in AO 1985-16.⁴⁶

12 Therefore, based on the information obtained during the investigation, we recommend
13 that the Commission enter into pre-probable cause conciliation with SWT to settle its violation of
14 52 U.S.C. § 30111(a)(4).

⁴³ Stone Dep. Tr. at 33:4-8.

⁴⁴ Advisory Op. 1985-16 at 1 (Weiss).

⁴⁵ *Id.* at 2. Similarly, in Advisory Op. 2004-24 at 2-3 (NGP), the Commission concluded that it would be impermissible for a political software company to enable clients to append contribution histories to the pre-existing names in their personal database, in order to allow clients to "conduct fundraising more efficiently" and "resolicit existing donors who may have given more to other committees." More recently, the Commission found reason to believe that a software company violated the sale and use provision by marketing a program that ranks and sorts a pre-existing list by likelihood to make a contribution based, in part, on contribution histories derived from the FEC database.

⁴⁶ Though SWT intentionally matched contribution histories from the FEC database with its voter file, there is nothing to indicate that SWT was specifically aware that using FEC data in this manner was prohibited. *See* Stone Dep. Tr. at 96:14-98:1 (describing his belief that the provision restricts sale and use of names and addresses, not the matching of contribution histories to pre-existing names to target solicitation prospects).

B. The Commission Should Dismiss the Allegations that Stone was Personally Liable for Violations of the Sale and Use Provision

The sale and use provision applies to “any person” who sells or uses FEC data for the purpose of soliciting contributions or for commercial purposes.⁴⁷ At the reason to believe stage, the Commission took no action as to allegations that Stone, SWT’s president and CEO, was personally liable.⁴⁸ There was limited information regarding Stone’s conduct with respect to the violations. We have since confirmed that the list was owned by SWT as a corporate asset, not by Stone personally.⁴⁹ Stone testified that he was entirely unaware that names and addresses from the FEC database had been added to the RED List,⁵⁰ and SWT produced emails showing that Stone initiated and participated in efforts to correct the problem and voluntarily delete FEC data from SWT’s system.⁵¹ Although Stone directed FEC data to be matched with pre-existing names in the voter file to identify known contributors for the purpose of potentially targeting or flagging those individuals as solicitation prospects, Stone attests that he did not understand this to be a violation of the law because it did not involve the direct sale of names and addresses from the FEC database.⁵²

The Commission has generally refrained from pursuing violations of the sale and use provision against individuals who acted in their official capacity and without knowledge of illegality.⁵³ This Office has advised that the Commission’s “interest in safeguarding its data is

⁴⁷ 52 U.S.C. § 30111(a)(4).

⁴⁸ Cert. ¶ 2(b), MURs 6960 & 6991 (July 12, 2017).

⁴⁹ Sept. 2017 Post-RTB Resp. ¶ (A)(1).

⁵⁰ Stone Dep. Tr. at 59:23-60:12.

⁵¹ *E.g.*, SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data).

⁵² Stone Dep. Tr. at 96:14-98:1.

⁵³ *See, e.g.*, Factual & Legal Analysis at 1, 3-4, MUR 6290 (Gillette) (dismissing allegations against an official from a non-profit corporation because it appeared she had “acted solely in her capacity as an agent” of the

1 served by enforcing the [sale and use] provision against the corporation.” Stone appears to
2 have acted solely in his capacity as an agent for SWT, and we did not identify any aggravating
3 circumstances that might weigh in favor of pursuing the allegations against him. Therefore, we
4 recommend that the Commission dismiss the allegations that Stone violated 52 U.S.C.
5 § 30111(a)(4) in his individual capacity.

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corporation and “not in her own independent personal interest”);

In matters where
the complaint did not specifically name any corporate officials as respondents, the Commission has generally not
sought to personally notify such corporate officials. *See, e.g.*, MUR 6334 (Aristotle Int’l, Inc.).

15

1-800-4-A-6256

VI. RECOMMENDATIONS

1. Enter into pre-probable cause conciliation with SW Technologies, LLC;
- 2.
3. Dismiss the allegations that Roger A. Stone violated 52 U.S.C. § 30111(a)(4);
4. Approve the attached factual and legal analysis for Roger A. Stone;
5. Close the file as to Roger A. Stone; and
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

Date: 5/30/2019

Peter G. Blumberg
Peter G. Blumberg
Acting Deputy Associate General
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Claudio J. Pavia
Claudio J. Pavia
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Attachments:
Factual and Legal Analysis for Roger A. Stone

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 Respondent: Roger A. Stone

MURs 6960 & 6991

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7 **I. INTRODUCTION**

8 These matters were generated by complaints filed with the Federal Election Commission
9 by the Republican National Committee ("RNC") and the National Republican Congressional
10 Committee ("NRCC"). They allege that SW Technologies, LLC d/b/a Advocacy Data ("SWT")
11 violated 52 U.S.C. § 30111(a)(4), the "sale and use" provision of the Federal Election Campaign
12 Act of 1971, as amended (the "Act") by compiling a commercial mailing list with the names and
13 addresses of contributors obtained from their FEC disclosure reports. Further, the complainants
14 allege that Roger A. Stone, SWT's founder, president, and CEO, individually violated the sale
15 and use provision.

16 For the reasons stated below, the Commission dismisses the allegations that Roger A.
17 Stone violated 52 U.S.C. § 30111(a)(4), as a matter of prosecutorial discretion, pursuant to
18 *Heckler v. Chaney*, 470 U.S. 821 (1985).

19 **II. FACTUAL SUMMARY**

20 Between December 2014 and August 2015, SWT rented a commercial mailing list to
21 political customers called the Republican Elite Donors ("RED") List that was generated by
22 "narrowing down" the 190 million names in SWT's "voter file" database to the approximately
23 200,000 names comprising the RED List who were deemed most likely to donate to Republican
24 or conservative organizations.¹ This was accomplished, in part, by matching the pre-existing

¹ Letter from Mike Wittenwyler and Nate Zolik, Godfrey & Kahn S.C., to CJ Pavia, Attorney, FEC ¶ (B)(2) (Sept. 6, 2017) ("Sept. 2017 Post-RTB Resp."); Stone Dep. Tr. at 33:4-8, 99:16-17 (Oct. 25, 2018); MUR 6991 Compl. (Dec. 7, 2015), Ex. B at 2 (RED List data card).

1 names in the voter file to disclosure reports obtained from the Commission's website that were
2 filed by the RNC and NRCC, and identifying known political contributors.² SWT explained that
3 its object in reviewing the RNC and NRCC data was to match the information with the pre-
4 existing list of names in the voter file, not to copy new names or addresses.³

5 Complainants include "salted" names on their FEC disclosure reports to deter illegal use
6 of their contributor information.⁴ In June 2015, the RNC received solicitation packages that
7 were addressed to salted names from the National Rifle Association and Jeb 2016.⁵ The RNC
8 contacted the mailing vendor and discovered that it had used the RED List.⁶ SWT was alerted
9 by the RNC that the RED List appeared to contain FEC data.⁷ SWT deleted only those records
10 that had been added as part of a recent update and continued to rent the RED List to customers.⁸
11 Several weeks later, in late June, July, and August of 2015, the RNC received additional
12 solicitation packages addressed to salted names from Jeb 2016 and Carson America that were
13 also traced back to the RED List.⁹ Meanwhile, in August 2015, the NRCC received a
14 solicitation package addressed to a salted name from Cruz for President.¹⁰ The NRCC contacted

² Stone Dep. Tr. at 49:21-25; *see* Letter from Brian Svoboda and Karl Sandstrom, Perkins Coie LLP, to CJ Pavia, Attorney, FEC ¶¶ 1(c)-(d), 3(a) (Oct. 10, 2018) ("Oct. 2018 Subpoena Resp.").

³ Stone Dep. Tr. at 74:23.

⁴ MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); *see also* 52 U.S.C. § 30111(a)(4) (providing that political committees may submit up to ten fictitious names, *i.e.*, "salted" names, on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes); 11 C.F.R. § 104.3(e) (same).

⁵ MUR 6991 Compl. at 2.

⁶ *Id.*

⁷ MUR 6991 Resp. at 2 (Jan. 19, 2015); MUR 6991 Compl., Ex. D; *see* Stone Dep. Tr. at 58:16-60:12.

⁸ Stone Dep. Tr. at 58:11-15, 70:8-72:11; Sept. 2017 Post-RTB Resp. ¶ (C)(2).

⁹ MUR 6991 Compl. at 2.

¹⁰ MUR 6960 Compl. at 1.

1 Cruz for President and discovered that it had similarly used the RED List to compile addresses
2 for the solicitation.¹¹ SWT was alerted by the NRCC that the RED List appeared to contain FEC
3 data and pulled the list from the market entirely.¹²

4 The MUR 6960 Complaint (August 2015) and the MUR 6991 Complaint (January 2016)
5 included the salted names at issue.¹³ SWT used the salted names to perform a targeted search of
6 its system, which revealed that the raw FEC data files containing disclosure reports filed by the
7 RNC and NRCC — intended to be matched with the voter file, as described above — had been
8 transmitted to the company responsible for marketing the RED List and handling individual
9 client orders, and added to the RED List.¹⁴ SWT was unable to establish precisely how or when
10 this occurred, but concluded that the raw FEC data files had been “inadvertently” transmitted.¹⁵
11 SWT deleted the raw FEC data files from its system, removed the notations in the voter file
12 showing contribution histories, and also discontinued sales of the RED List.¹⁶ SWT asserts that
13 using FEC data is “no longer a part of [its] business model.”¹⁷

14 III. LEGAL ANALYSIS

15 The Act requires political committees to report the name, mailing address, occupation,
16 and employer of each person who makes an aggregate contribution in excess of \$200 within the

¹¹ See *id.*

¹² MUR 6960 Compl., Ex. D; MUR 6991 Resp. at 2; Stone Dep. Tr. at 72:23-73:12.

¹³ MUR 6960 Compl., Ex. A; MUR 6991 Compl., Exs. E, F.

¹⁴ Stone Dep. Tr. at 73:17-74:4; 75:4-77:16.

¹⁵ Stone Dep. Tr. at 89:20-90:6; MUR 6991 Resp. at 2; Sept. 2017 Post-RTB Resp. at 6; see Stone Dep. Tr. at 57:9-58:1, 78:8-16.

¹⁶ Stone Dep. Tr. at 52:18-53:11, 81:25-82:16; Sept. 2017 Post-RTB Resp. at 6; SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data); see Stone Dep. Tr. at 53:12-14 (confirming that “the voter file is in a state right now as if the FEC database doesn’t exist”).

¹⁷ Stone Dep. Tr. at 96:13.

1 calendar year (or election cycle, in the case of an authorized committee), together with the date
2 and amount of any such contribution.¹⁸ Further, the Act requires that the Commission make all
3 such reports available for public inspection and copying, except that information copied from
4 such reports “may not be sold or used by any person for the purpose of soliciting contributions or
5 for commercial purposes, other than using the name and address of any political committee to
6 solicit contributions from such committee.”¹⁹

7 The sale and use provision applies to “any person” who sells or uses FEC data for the
8 purpose of soliciting contributions or for commercial purposes.²⁰ Stone, the executive officer
9 from SWT responsible for managing the RED List, had 30 years of experience in politics and
10 with Commission regulations, and was aware that simply copying and selling names from the
11 FEC database would run the risk of mailing a salted name.²¹ The RED List was owned by SWT
12 as a corporate asset, not by Stone personally.²² Moreover, Stone testified that he was unaware
13 that names and addresses from the FEC database had been added to the RED List,²³ and SWT
14 produced emails showing that Stone initiated and participated in efforts to correct the problem
15 and voluntarily delete FEC data from SWT’s system.²⁴ Although Stone directed FEC data to be
16 matched with pre-existing names in the voter file to identify known contributors for the purpose

¹⁸ 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A).

¹⁹ *Id.* § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

²⁰ 52 U.S.C. § 30111(a)(4).

²¹ MUR 6960 Resp. at 1 (Oct. 20, 2015); Stone Dep. Tr. at 59:9-19 (“I’ve been working with lists since 1986.”). Stone said that he understood the provision to restrict the sale and use of names and addresses, and that it did not restrict the matching of contribution histories to pre-existing names to target solicitation prospects. *See id.* at 96:14-98:1.

²² Sept. 2017 Post-RTB Resp. ¶ (A)(1).

²³ Stone Dep. Tr. at 59:23-60:12.

²⁴ *E.g.*, SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data).

1 of potentially targeting or flagging those individuals as solicitation prospects, Stone attests that
2 he did not understand this to be a violation of the law because it did not involve the direct sale of
3 names and addresses from the FEC database.²⁵

4 The Commission has generally refrained from pursuing violations of the sale and use
5 provision against individuals who acted in their official capacity and without knowledge of
6 illegality.²⁶ The Commission's interest in safeguarding its data, under these circumstances, is
7 served by enforcing the sale and use provision against the corporation. Therefore, the
8 Commission dismisses the allegations that Stone violated 52 U.S.C. § 30111(a)(4) in his
9 individual capacity, as a matter of prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470
10 U.S. 821 (1985).

²⁵ Stone Dep. Tr. at 96:14-98:1.

²⁶ See, e.g., Factual & Legal Analysis at 1, 3-4, MUR 6290 (Gillette) (dismissing allegations against an official from a non-profit corporation because it appeared she had "acted solely in her capacity as an agent" of the corporation and "not in her own independent personal interest"). In matters where the complaint did not specifically name any corporate officials as respondents, the Commission has generally not sought to personally notify such corporate officials. See, e.g., MUR 6334 (Aristotle Int'l, Inc.).